

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-003-13-1-5-00156-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-13-481-013.000-003  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 4711 W. 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant lot at \$1,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On August 20, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Joseph E. James and Robert Metz, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

1. The official record contains the following:
  - Petitioner’s Exhibit 1: Property Record Card for 2015-2018
  - Petitioner’s Exhibit 2: Property Record Card for 2010-2013
  - Petitioner’s Exhibit 3: Aerial map
2. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.<sup>1</sup>

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<sup>1</sup> The Assessor offered no exhibits.

## BURDEN OF PROOF

3. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
4. Here, the property's assessment decreased from 2012 to 2013. Nowacki therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

5. Nowacki's case:
  - a. The property is in the same subdivision as other properties Nowacki owns. It is similar to them in that it has little or no value as a divided lot. The property is on a paper street with no access and no utilities, contrary to the characteristics shown on the Property Record Card. It started receiving a -50% influence factor in 2013 because of its distance from improved roads and utilities, but the Assessor should have applied the influence factor in previous years as well. *Nowacki testimony; Pet'r Exs. 1-3.*
  - b. Nowacki acquired the property at an auction attended by hundreds of willing and able bidders who were uninterested in a property assessed at \$3,600. The property has churned through the tax sale system for fifty years because of this over-assessment. One would think the Assessor would lower the assessment when no one shows any interest in a property for that length of time. But that would not occur because it is part of a strategy "to make sure that nobody owns these properties until insiders come along with some strategy, some scheme, some scam to possess the properties." *Nowacki testimony; Pet'r Ex. 2.*
  - c. Nowacki contends a fair market value for this property is \$500. No one can invest in the city when a property that is worth \$500 has an assessment of \$3,600. If the State would change the assessment to \$500, it would go a long way in addressing the problem of blight and attracting people to invest in the city. *Nowacki testimony; Pet'r Ex. 2.*
6. The Assessor's case:
  - a. The Assessor contends that Nowacki provided no market evidence to support his requested valuation for 2013, and he recommends no change to the assessment. *James testimony.*

## ANALYSIS

7. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki argued the property's 2013 assessment should be \$500, but he failed to present any probative market-based evidence to support that value. Nowacki offered general statements about some of the property's characteristics and the tax sale process, but statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. To the extent Nowacki asserted that the characteristics on the Property Record Card are incorrect, we note that he described the influence factor as accounting for those same characteristics.<sup>2</sup> More importantly, even if the Assessor made errors, simply attacking his methodology is insufficient to rebut the presumption that the assessments are correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate

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<sup>2</sup> Because the only assessment year before us is 2013, we will not address Nowacki's argument regarding application of the influence factor to prior years.

that their suggested value accurately reflects the property's true market value-in-use.”  
*Id*

- e. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 assessment.

ISSUED: November 13, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.